IN THE

Supreme Court of the United States

October Term, 1976

No. 77-196

GENERAL FINANCE CORPORATION,
Petitioner,

v.

JOHN C. POLLOCK AND BARBARA POLLOCK,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

MILTON W. SCHOBER
TERRENCE H. KLASKY
1750 Pennsylvania Avenue, N.W.
Suite 1107
Washington, D.C. 20006
(202) 393-4961

Attorneys for Petitioner

August 5, 1977

BEACON PRINTING - 293-7160 - Washington, D.C. 20036

INDEX

	Page
Court of Appeals Opinion	2
Court of Appeals Opinion Denying Rehearing	9
District Court Order	14
District Court Judgment	15
Special Master's Recommendations	16
Statutes and Regulations Involved	22
Federal Reserve Board Staff Interpretations	31
Contract and Security Agreement on which the Action was Based	41

IN THE

Supreme Court of the United States

October Term, 1976

No.

GENERAL FINANCE CORPORATION,
Petitioner,

v.

JOHN C. POLLOCK AND BARBARA POLLOCK,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

United States Court of Appeals,
Fifth Circuit.

John C. POLLOCK and Barbara Pollock,
Plaintiffs-Appellees,

v.

GENERAL FINANCE CORPORATION,
Defendant-Appellant.
No. 75-2017.

July 16, 1976.

Appeal from the United States District Court for the Northern District of Georgia.

Before GODBOLD, McCREE and TJOFLAT, Circuit Judges.

McCREE, Circuit Judge.

This is an appeal by the defendant from an adverse judgment in a truth-in-lending action. 15 U.S.C. § 1639. The district court determined that the defendant had violated the requirements of Regulation Z, 12 C.F.R. § 226.8, by failing to inform the borrowers in the disclosure statement about (1) the actual proceeds of the loan, (2) the fact that after-acquired property was subject to a security interest and (3) the consequence that any future indebtedness was secured by property used to secure the present loan. We affirm.

This case was heard by Bankruptcy Judge William L. Norton, Jr., sitting as a Special Master for the U.S. District Court for the Northern District of Georgia. On February 28, 1975, Judge Norton filed his Recommendations and on March 26, 1975, the district court adopted the Special Master's Recommendations and entered judgment in favor of the plaintiffs.

It appears from the record that on September 12, 1973, appellees obtained a loan ("consumer credit" under 15

U.S.C. §§ 1602 (e), (h)) in the amount of $155.28. The disclosure statement, however, failed to state expressly that the loan proceeds were $155.28. Instead, the statement indicated that the "amount financed" was $171.36. The statement separately itemized the charges for credit life insurance and disability credit insurance of $3.84 and $12.24, respectively. The "amount financed" was defined in another part of the disclosure statement as including insurance charges and the principal amount of the loan.[1]

The district court adopted the bankruptcy judge's recommended finding that a violation of 12 C.F.R. § 226.8(d)(1) had occurred. That section provides that the "amount of credit . . . which will be paid to the customer . . ., including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge" must be disclosed. The bankruptcy judge determined that the principal amount of the loan ($155.28) represented a part of the amount of credit extended and that individual itemization was required.

The district court further determined that the disclosure statement phraseology about future indebtedness and about security interests in after-acquired property conflicts with the corresponding language of the security agreement. With respect to after-acquired property, the disclosure statement recites that the security agreement "*may* cover after-acquired property." The pertinent language of the security agreement indicates, however, that a security interest *would be retained* in "all of the household and consumer goods . . . now or hereafter located in . . . the Debtor's residence . . . ." With respect to future indebtedness, the next sentence in the disclosure statement provides that "[a]ny chattel or

---

[1](Footnote omitted) Copy of disclosure statement provided by General Finance appears at page 41 of the Appendix.

real property which secured this loan *may* secure future or other indebtedness." The security agreement, however, indicates that future indebtedness incurred by the debtor "at any time before the entire indebtedness secured thereby shall be paid in full" *would be secured* by the property described in the security agreement.

With respect to these two disclosures, the court determined that General Finance had failed to "clearly set forth" the fact that after-acquired property *will be* subject to the security interest or that future indebtedness *will be* secured by property listed in the security agreement. It concluded that General Finance thereby violated 12 C.F.R. § 226.8(b)(5).[2]

The first issue we consider is whether the district court erred in determining that the failure of General Finance to separately itemize the amount of the loan proceeds was a violation of § 226.8(d)(1). The regulation requires disclosure of the "amount of credit . . . which will be paid to the customer . . . including *all charges, individually itemized*, which are included in the amount of credit extended but which are not part of the finance charge...." The disclosure statement here clearly identifies and itemizes $3.54 and $12.24 as credit insurance charges. However, it does not expressly identify and itemize the principal amount borrowed.[3]

District Judge O'Kelley made the following observation about § 226.8(d)(1) which would support the conclusion

[2]The regulation provides in pertinent part that: "If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth . . ."

[3]We observe that the Office of Saver and Consumer Affairs of the Federal Reserve System has issued an opinion letter to General Finance stating that it did 'not consider the basic amount of loan proceeds to be a 'charge' within the meaning of § 226.8(d)(1) and thus [did] not believe that this amount must be individually described under that section.'

that the principal amount of loan proceeds need not be itemized:

> It appears to this court that the phrase, "which are included in the amount of credit extended but which are not part of the finance charge," clearly refers to the charges because otherwise there would be no need for the "but which are not part of the finance charge" since this contemplates a "charge" not an amount of credit which is paid to the borrower or on his account. This would indicate that the wording "individually itemized" sandwiched between the reference to all "charges" and that phrase refers only to such charges.

Mullinax v. Aetna Finance Co., CA 19124 (July 25, 1975 N.D.Ga.).

We tend to agree that Judge O'Kelley's interpretation of Regulation Z, § 226.8(d)(1) is more consonant with the literal language of the regulation that is the interpretation made by the district judge in this case. Nevertheless, we affirm the district court's finding of a disclosure violation because the regulation must be read in light of the statute which requires separate disclosure of the amount borrowed. Under 15 U.S.C. § 1639(a) a creditor is required to "disclose each of the following items, to the extent applicable:"

> (1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.
>
> (2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.
>
> (3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

These three subsections of § 1639(a) clearly require the disclosure of three different items. A creditor must

disclose (1) the amount of cash given to the debtor or given on the debtor's behalf, (2) the charges, individually itemized, and (3) the total of the above two amounts. As the disclosure statement makes apparent, General Finance satisfied only the last two subsections of § 1639(a). The statement also informed the debtor that the total amount financed was $171.36. However, the statement failed to disclose that the amount of the loan was $155.28.[4] Although the debtor could have determined the amount of the loan by the simple arithmetic procedure of substracting the total insurance charges from the total amount financed, we determine that the statute does not require a consumer to perform this function, and that the creditor's failure to disclose the required item violated § 1639(a)(1).

Next, we consider whether General Finance failed to properly disclose that appellee's after-acquired property would be subject to appellant's security interest. As we have indicated above, § 226.8(b)(5) requires disclosure of the fact that "after-acquired property *will be* subject to the security interest . . . ." (Emphasis added). Although the appellant concedes that there is a discrepancy between the language of the security agreement (unconditional) and the language in the disclosure statement (conditional), it contends that the conditional language of the disclosure statement accurately reflects the uncertainty surrounding the possibility of obtaining a security interest in after-acquired property. In Georgia, the Uniform Commercial Code has been adopted and §§9-204(3),(4)(b) govern the determination whether after-acquired property is subject to a lender's security interest. Under § 9-204(3), it is stated that "except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations

[4]Although one of the amounts listed on the statement was $155.28, there was no description indicating what this amount was. We do not believe that this constitutes the meaningful disclosure required by § 1639(a). *See* 15 U.S.C. § 1601.

covered by the security agreement." Subsection (4) states that "no security interest attaches under an after-acquired property clause . . . (b) to consumer goods . . . when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value." The disclosure statement clearly indicated that consumer goods were subject to the security interest. Accordingly, although it is the general rule under subsection (3) that after-acquired collateral will secure present obligations under the security agreement, *consumer goods* acquired after the security agreement was entered into by the parties cannot be made subject to the security interest unless they are acquired within 10 days after the secured party has given value.

We believe that the disclosure statement, although perhaps not false, fails to make a complete disclosure concerning the security interest retained in after-acquired goods, and therefore it did not comply with the futher requirement of the regulation that notice that after-acquired property will be subject to the security interest "shall be clearly set forth in conjunction with the description or identification of the type of the security interest held . . . ." We believe that this portion of the regulation requires a lender to explain the 10 day limitation of UCC 9-204(4)(b) so that the borrower is informed that any consumer goods that he may acquire within 10 days of the loan transaction are subject to the security interest and that any consumer goods acquired after that date are not. Since the lender failed to disclose the nature of the security interest retained in after-acquired property, we determine that General Finance violated § 226.8(b)(5).

Next we consider whether General Finance properly disclosed the fact that future indebtedness would be secured by property described in the security agreement. Athough the security agreement indicated that future indebtedness was secured by the property described in the agreement, the disclosure statement again used

conditional language to indicate that "any chattel . . . which secured this loan *may* secure future . . . indebtedness." This regulation requires disclosure if "future indebtedness is or may be secured by any such [referring to after-acquired] property." The Uniform Commercial Code permits future advances to be secured by items listed in the security agreement (9-204(5)), and does not have a limitation similar to the one concerning after-acquired property.

Again, we believe that the lender failed to follow the mandate of the regulation that notice of the fact that future indebtedness is secured by after-acquired property "shall be clearly set forth in conjunction with the description or identification of the type of security interest held . . . ." The lender should have indicated (1) that a security interest was retained in all consumer goods acquired by the borrower if the goods should be acquired within 10 days of the date that the lender makes the loan and (2) that no security interest was retained in consumer goods acquired after the 10 day period.

In accordance with the above, the judgment of the district court is affirmed.

United States Court of Appeals.
Fifth Circuit.

John C. POLLOCK et al.,
Plaintiffs-Appellees,

v.

GENERAL FINANCE CORPORATION,
Defendant-Appellant.

No. 75-2017.

May 27, 1977.

Appeal from the United States District Court for the Northern District of Georgia.

ON PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC

Before GODBOLD and TJOFLAT, Circuit Judges.

PER CURIAM:

In our earlier opinion herein, 535 F.2d 295 (5 Cir. 1976), we affirmed a judgment imposing the minimum statutory penalty of $100.00, together with attorneys' fees, on appellant General Finance Corporation, for three violations of the Truth-in-Lending Act and Regulation Z thereunder, occurring in connection with a loan transaction consummated September 12, 1973. Appellant and amici, including the Federal Reserve Board, now raise a number of issues relating to our decision which deserve an answer but do not, in our opinion, require either reargument or reversal of the judgment below.

Addressing our conclusion that it is a violation of 15 U.S.C. § 1639(a) for a creditor to fail to make a labeled disclosure of the amount of loan proceeds of which the debtor will have actual use, appellant argues, with the help of the Federal Reserve Board, that the Board does not require such disclosure. We held previously that, although Regulation Z § 226.8(d)(1) as promulgated might

appear to support appellant's position, it must be read in the light of § 1639(a),[1] which does include this requirement. The Board contends that it possesses, and has exercised, power to eliminate this particular disclosure requirement, either by virtue of its authority under § 1604 of the Act or in order to resolve a contradiction in the statutory language.

The Board finds a contradiction in § 1639(a) in the fact that subsection (3) thereof requires the disclosure of the sum of the amounts described in (1) and (2). It argues that some of the "charges" required to be disclosed by (2), such as insurance premiums, as here, "could be construed" to be amounts paid "to another person on [the debtor's] behalf" and thus fall within (1). This argument discovers a contradiction where none is necessarily present. In view of the fact that (3) is stated to be the sum of (1) (2), it is more reasonable to construe the disputed language of (1) to refer to consolidation loan payments and the like rather than to incidental charges such as credit insurance, which are covered by (2). Such a construction gives effect to the entire section without the excision of any statutory disclosure requirement.

Under § 1604, the Board's power to make "adjustments and exceptions for any class of transactions" is limited to

[1]"(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

"(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

"(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

"(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2))."

15 U.S.C. § 1639(a)(1), (2) and (3).

efforts "to effectuate the purposes of [the Act], to prevent circumvention or evasion thereof, or to facilitate compliance therewith." The Board's regulation, sought to be justified by a statutory contradiction that appears to us not to exist, cannot be justified under § 1604. Therefore, we reaffirm our holding that the Act requires that a creditor make a labeled disclosure of actual loan proceeds in accordance with § 1639(a).

Appellant and amici also contend that General Finance Corporation has a good defense under § 1640(f) of the Act, in that it relied in good faith on a Staff Opinion letter issued by an employee of the Board on September 13, 1973,[2] and on the perhaps more natural reading of § 226.8(d)(1). On February 27, 1976, Congress enacted Public Law No. 94222, § 3(d)[3] of which appears to extend the § 1640(f) defense to cover Staff Opinion letters. This enactment occurred several months after briefs were due on this appeal, so we do not find that appellant's assertion of the defense on petition for rehearing was untimely, although we agree with amicus Legal Aid Society of Atlanta that the defense should ordinarily be pleaded specially and proved. We find it reasonable to assume, moreover, that this extended defense is available in any case wherein review is still available, "whether by appeal or otherwise." Section 408(e) of P.L. 93-495 (Oct. 28, 1974), 1974 U.S. Code Cong. & Ad. News, p. 6119. It is not justified by other violations.[4]

might require a remand to the finder of fact, because we conclude *infra* that the penalty imposed in this case was justified by other violations.[4]

[2]This letter is the only concrete evidence predating the subject loan transaction presented by General Finance Corporation in aid of its reliance defense.

[3]See 1976 U.S. Code Cong. & Ad. News, 90 Stat. 198.

[4]The Truth-in-Lending Act does not provide multiple recoveries for multiple violations in one transaction. See 1968 U.S. Code Cong. & Ad. News p. 1976.

Addressing our previous holding that a statement that a security agreement "may" cover after-acquired property does not, without more, fulfill the requirement of § 226.8(b)(5) of Regulation Z, appellant argues that such a statement is sufficient under the interpretation given to the regulation by two very recent Staff Opinion letters. Since neither of these letters antedates the loan agreement in this case, appellant has no colorable reliance defense.

We are mindful that Staff Opinion letters are entitled to weight when the construction of the Board's regulations is at issue. *Philbeck v. Timmers Chevrolet, Inc.*, 499 F.2d 971 (5th Cir. 1974). The force with which these least authoritative pronouncements are allowed to press on the judicial scales, however, must vary with the circumstances of each case.[5] *Skidmore v. Swift & Co.*, 323 U.S. 134, 140, 65 S.Ct. 161, 89 L.Ed. 124 (1943). *General Electric Co. v. Gilbert*, ____ U.S. ____, 97 S.Ct. 401, 50 L.Ed.2d 343 (1976). In the present case we are offered two Staff Opinion letters which, far from being contemporaneous with the adoption of § 226.8(b)(5), were in fact procured after the decision of the trial court herein. Furthermore, the views expressed in these letters appear to conflict with the view of the disclosure requirement as to after-acquired property that is manifest in the prior Staff Opinion letter of August 22, 1974. CCH Consumer Credit Service [Par.] 31151. Section 226.8(b)(5) itself uses the word "will" rather than "may," and there is substantial judicial authority for the view that the limitation of Uniform Commercial Code § 9-204(2)(b) must be disclosed. *Woods v. Beneficial Finance Co. of Eugene*, 395 F.Supp. 9 (D.Or. 1975). *Johnson v. Associates Finance*, 369 F.Supp. 1121 (S.D.Ill. 1974). Under these circumstances we decline to give controlling weight to the Staff Opinion letters of December 30, 1975, and May 28, 1976,

[5]We note that the Board pronouncement to which the *Philbeck* court referred for the authority of Staff Opinion letters appears to have been concerned primarily not with construction but with reliance, a matter now dealt with by § 1640(f). 499 F.2d at 979, note 17.

and we affirm our earlier holding as to disclosure of the extent of a security interest in after-acquired property.

We find no merit in appellant's attack on our earlier ruling as it relates to disclosure of a security interest in future indebtedness. However, we correct an error in our previous opinion. We stated therein that the words "such property" in the last sentence of § 226.8(b)(5) of Regulation Z refer to after-acquired property. Closer consideration convinces us, despite the awkward drafting of this sentence, that the proper referent is "property to which the security interest relates," as these words appear in the first sentence of (b)(5).

Except to the extent of this opinion, the petition for rehearing is DENIED and the affirmance of the judgment below remains in effect. No member of this panel or judge in regular active service on the court having requested that the court be polled on rehearing en banc (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Rehearing En Banc is DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

C74-551A

JOHN C. POLLOCK and BARBARA POLLOCK

v.

GENERAL FINANCE CORPORATION OF GEORGIA

(Filed March 27, 1975)

ORDER

This truth-in-lending action is presently before the Court for approval of the Recommendations of the Special Master. The Court has read and considered the opinion of Judge Norton, sitting as Special Master, and the defendant's objections to these Recommendations. The Court approves and adopts the Recommendations of the Special Master.

Accordingly, let judgment be entered in favor of the plaintiff for statutory damages of $100 plus reasonable attorney's fees of $400.

SO ORDERED, this 26 day of March, 1975.

Charles A. Moye, Jr.

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION FILE NO. C74-551A

JOHN C. POLLOCK and BARBARA POLLOCK

vs.

GENERAL FINANCE CORPORATION OF GEORGIA

(Filed March 27, 1975)

JUDGMENT

This action came on for Consideration before the Court, Honorable Charles A. Moye, Jr., United States District Judge, presiding, and the issues having been duly considered and a decision having been duly rendered, adopting the Special Master's Recommendations granting plaintiffs' motion for summary judgment.

It is Ordered and Adjudged that judgment be entered in favor of the plaintiffs JOHN C. POLLOCK and BARBARA POLLOCK and against the defendant GENERAL FINANCE CORPORATION OF GEORGIA in the amount of ONE HUNDRED & 00/100 dollars ($100.00) statutory damages, FOUR HUNDRED & 00/100 dollars ($400.00) attorney's fees and costs.

March 27, 1975

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION
FILE NO. C74-551A

JOHN C. POLLOCK AND BARBARA POLLOCK,
Plaintiffs

v.

GENERAL FINANCE CORPORATION,
Defendant

(Filed March 11, 1975)

RECOMMENDATIONS OF BANKRUPTCY JUDGE
WILLIAM L. NORTON, JR.
SITTING AS SPECIAL MASTER

OPINION

This action was brought by JOHN C. POLLOCK and BARBARA POLLOCK against GENERAL FINANCE CORPORATION on March 27, 1974, based upon a Consumer Credit Transaction entered into between the parties on September 12, 1973. Responsive pleadings were filed by the Defendant and the case was set for a preliminary conference before this Court on May 23, 1974. At that conference, the Plaintiffs set out three (3) separate allegations of violations on behalf of the Defendant and the Plaintiffs subsequently filed their Motion for Summary Judgment on or about August 9, 1974, and the matter is now before the Court for determination of the issues.

(1) The Plaintiffs argue that in a "closed end" loan transaction, Section 129(a)(1) of the Act, (15 U.S.C. 1639(a)(1)) and Regulation Z 226.8(d)(1) require individual itemization of all elements included in the amount financed. Regulation Z 226.8(d)(1), in defining "amount financed", requires disclosures of

> (t)he amount of credit . . . which will be paid to the customer or for his account or to another person on his behalf, including all charges, *individually itemized*, which are *included in the amount of credit extended* but which are not a part of the finance charge, using the term, "amount financed." (Italics supplied).

The disclosure statement furnished Plaintiffs discloses the "amount financed" as $171.36. Plaintiffs argue that although there are three charges disclosed on two different lines of the disclosure statement that total $171.36 (credit life $3.84; credit disability, $12.24; and an unlabeled charge of $155.28), that only after checking with the Defendant following the pretrial conference was it determined that the $155.28 amount was the amount of a check given Plaintiffs as loan proceeds, and, therefore, a part of the amount financed.

Defendant argues that the amount received is not a "charge"; that it is the amount of cash received; that it need not be itemized as "amount received". The Court finds that such ingredients of the "amount financed" required to be itemized do not have to be "charges" as used in said Sec. 226.8(d)(1). All parts of "amount financed", i.e., the amount of the credit which is paid to the customer *and* "all charges", which are included in the amount of credit extended, but not a part of the finance charge, must be individually itemized and labeled to show the borrower what they are.

Plaintiffs contend that the $155.28, the amount of cash received, must be labeled in some manner so as to indicate to Plaintiffs what the charge is for, as required by 15 U.S.C. 1601 (Section 102) of the Act, which expresses the general purpose of the Act to be to provide "meaningful" disclosures; that the Plaintiffs are thereby unable "to compare the various credit terms available to (them) and avoid the uninformed use of credit" as expected by 15 U.S.C. 1601.

Defendant admits that it might be better if creditor had labeled the $155.28 as the amount of the check or cash received by borrower; but that such labeling is not required by the Act or Regulation Z. Defendant argues that it is obvious to a borrower on inspection of the disclosure statement what it represents; that is, the cash proceeds received by the borrower from the proceeds of the loan.

The Court finds no violation in Sec. 102 since said section, being preamble only, merely sets the tone of the Act. But the disclosure provisions must be construed with the purpose of the Act as stated in Sec. 102 always in mind.* It appears to this Court that this unlabeled amount of $155.28 represents "a part of the credit extended"—(the cash-received part)—which "is paid to the customer" and is required by Section 226.8(d)(1) to be itemized as a part of the "amount financed". Said sum, therefore, must be itemized along with the other itemized parts comprising the "amounts financed". Failure to so itemize constitutes a disclosure violation.

(2) Plaintiffs' argument concerning the disclosure of the term of credit life and disability insurances on the disclosure statement has been determined by *Philbeck v. Timmers Chevrolet, Inc., et al.*, 499 F.2d 971 (CA5) (August 1974). The failure here to include such premiums in the finance charge is not a violation of the Act.

(3) As an additional violation, the Plaintiffs allege that the Defendant has failed to properly disclose that
(a) Plaintiffs' after-acquired property will be subject to Defendant's security interest, and
(b) that Plaintiffs' future indebtedness to Defendant will also be secured.

*See *Robert P. McDaniel v. The Fulton National Bank of Atlanta*, C.A. C74-244A at pp. 6-8 (N.D. Ga., Sept. 19, 1974) (Recommendations of Bankruptcy Judge William L. Norton, Jr. Sitting as Special Master); *Jettie Ivey v. Atlanta Gas Light Co.*, C.A. C74-521A at pp. 11-14 (N.D. Ga., Nov. 11, 1974) (Recommendations of Bankruptcy Judge William L. Norton, Jr. Sitting as Special Master).

Regulation Z 226.8(b)(5) requires that a creditor describe or identify the type of security interest held, and that such security interest clearly identify the property which it relates. In addition,

> (i)f *after-acquired property will* be subject to the security interest, or if other or *future indebtedness is* or *may* be secured by any such property this fact shall be clearly set forth . . . (Italics supplied). Regulation Z 226.8(b)(5).

(a) *After-acquired Property.* On the disclosure statement furnished Plaintiffs, there are two disclosures dealing with security interests. In the disclosures at the top of Exhibit A, a box titled "security interest" has the word "yes" typed in. Immediately above the promissory note on the disclosure statement a disclosure titled "SECURITY" is set forth, which reads as follows, in part:

> SECURITY . . . If "YES" appears under "Security Interest" above, there is a Security Agreement on household and consumer goods belonging to Borrowers and located at their address stated above and on any property listed below . . . The Security Agreement *may* cover after-acquired property. Any chattel or real property which secured this loan *may* secure future or other indebtedness. (Italics supplied).

On the Security Agreement, however, under the heading, "DESCRIPTION OF SECURED PROPERTY," the following is set forth:

> All of the household and consumer goods . . . now or hereafter located in or about the premises constituting the Debtor's residence at their address above set forth or at any other address to which the same shall be removed . . .

It is apparent from the "now or hereafter located" language in the Security Agreement that after-acquired property will be subject to the security interest. This, of course, is more positive than the term "may" used in the disclosure statement which provides, "The Security Agreement *may* cover after-acquired property." (Italics supplied).

Section 226.8(b)(5) provides: "If after-acquired property *will* be subject to the security interest . . . this fact shall be clearly set forth . . ." (Italics supplied).

Disclosure that after-acquired property *may* be subject to the security interest, when, in fact such after-acquired property *is* subject, is inadequate. Failure here to disclose that after-acquire property *will* be subject to the security interest is a violation of the Act. Regulation Z 226.8(b)(5).

(b) *Future Indebtedness.* As quoted in section (3)(a) hereof, the disclosure statement provides that "(a)ny chattel or real property which secured this loan *may* secure future of other indebtedness." (Italics supplied).

Thus, Defendant has a security interest in Plaintiffs' household and consumer goods, and, according to the disclosure statement, it *may* secure future indebtedness.

Regulation Z 226.8(b)(5) provides "if other or future indebtedness *is* or *may* be secured by any such property this fact shall be clearly set forth" . . . (Italics supplied).

The disclosure statement providing that possible future indebtedness *may* be secured by Plaintiffs' household and consumer goods clearly sets forth that fact of possibility and seems to comply with the Act. Apparently a disclosure satisfies Section 226.8(b)(5) if it clearly discloses to the borrower that a security agreement does secure or *may* secure any future indebtedness.

Plaintiffs, however, further argue that the fact that the Security Agreement more positively provides that future indebtedness *is* secured by the Security Agreement, rather than the *"may"* disclosure in the disclosure statement, renders the disclosure erroneous under Section 226.8(b)(5).

The Security Agreement furnished Plaintiffs provides immediately below the typed in disclosures that "this Security Agreement secures future advances as provided

below." Below, in the third paragraph of the Security Agreement, the following language is set forth:

> This Security Agreement is given to secure payment of said note and *any note or notes executed and delivered to Secured Party by Debtor at any time before the entire indebtedness secured hereby shall be paid in full.* (Italics supplied).

The Security Agreement is not conditional with respect to fact that the security attaches to any future indebtedness. It is positive that any future note executed before this debt is paid shall be covered by this security. The Security Agreement is broader than the term "may" used in the disclosure statement. Therefore, the disclosure statement using the conditional "may" is contrary to the Security Agreement and does not disclose the true fact that the security given here does secure future indebtedness. The disclosure statement, being erroneous as to this fact, violates Sec. 226.8(b)(5).

The Defendant having violated the Act, the Plaintiffs' Motion for Summary Judgment should be granted and damages of twice the amount of the finance charge should be awarded to Plaintiffs. The finance charge was disclosed on the disclosure statement as $32.64. Thus, Plaintiffs are entitled to the minimum statutory damages of $100.00.

Plaintiffs' counsel has submitted an affidavit dealing with the number of hours spent on this civil action. Based on said affidavit, this Court recommends that Plaintiffs' counsel be awarded $400.00 as reasonable attorney's fees. Defendant may file objections to this recommendation within ten (10) days from the date of these Recommendations.

This 28th day of February, 1975.

WILLIAM L. NORTON, JR.
U.S. BANKRUPTCY JUDGE SITTING
AS SPECIAL MASTER

STATUTUES AND REGULATIONS INVOLVED

15 U.S.C. § 1601

(a) The Congress finds that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

15 U.S.C. § 1604

The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

15 U.S.C. § 1605

* * *

(b) Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with

the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise by payable.

(3) Taxes.

(4) Any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Board by regulation.

(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of a deed, settlement statement, or other documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports.

15 U.S.C. § 1610

(a) This title does not annul, alter, or affect, or exempt any creditor for complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this title or regulations thereunder, and then only to the extent of the inconsistency.

15 U.S.C. § 1631

(a) Each creditor shall disclose clearly and conspicuously, in accordance with the regulations of the Board, to each person to whom consumer credit is extended the information required under this chapter or chapter 4.

15 U.S.C. § 1639

(a) Any creditor making a consumer loan or otherwise extending consumer credit in a transaction which is neither a consumer credit sale nor under an open end consumer credit plan shall disclose each of the following items, to the extent applicable:

(1) The amount of credit of which the obligor will have the actual use, or which is or will be paid to him or for his account or to another person on his behalf.

(2) All charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge.

(3) The total amount to be financed (the sum of the amounts referred to in paragraph (1) plus the amounts referred to in paragraph (2)).

* * *

(8) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

U.S.C. § 1640

* * *

(f) No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

12 C.F.R. § 226.1

* * *

(a)(2) This Part implements the Act, the purpose of which is to assure that every customer who has need for consumer credit is given meaningful information with respect to the cost of that credit which, in most cases, must be expressed in the dollar amount of finance charge, and as an annual percentage rate computed on the unpaid balance of the amount financed. Other relevant credit information must also be disclosed so that the customer may readily compare the various credit terms available to him from different sources and avoid the uninformed use of credit. This Part also implements the provision of the Act under which a customer has a right in certain circumstances to cancel a credit transaction which

involves a lien on his residence. Advertising of consumer credit and consumer lease terms must comply with specific requirements and certain credit terms may not be advertised unless the creditor usually and customarily extends such terms. This Part also contains prohibitions against the issuance of unsolicited credit cards and limits on the cardholder's liability for unauthorized use of a credit card. In addition, this Part is designed to assist the customer to resolve credit billing disputes in a fair and timely manner, to regulate certain billing and credit card practices, and to strengthen the legal rights of consumers. This Part is also designed to assure that lessees of personal property are given meaningful disclosures of lease terms, to delimit the ultimate liability of lessees in leasing personal property and to require meaningful and accurate disclosures of lease terms in advertisements. Neither the Act nor this Part is intended to control charges for consumer credit, or interfere with trade practices except to the extent that such practices may be inconsistent with the purpose of the Act.

12 C.F.R. § 226.4

* * *

(a)(6) Charges or premiums for insurance, written in connection with any credit transaction, against loss of or damage to property or against liability arising out of the ownership or use of property, unless a clear, conspicuous, and specific statement in writing is furnished by the creditor to the customer setting forth the cost of the insurance if obtained from or through the creditor and stating that the customer may choose the person through which the insurance is to be obtained.

(7) Premium or other charge for any other guarantee or insurance protecting the creditor against the customer's default or other credit loss.

12C.F.R. § 226.4

* * *

(b) **Itemized charges excludable.** If itemized and disclosed to the customer, any charges of the following

types need not be included in the finance charge:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in subparagraph (1) of this paragraph which would otherwise be payable.

(3) Taxes not included in the cash price.

(4) License, certificate of title, and registration fees imposed by law.

(c) **Late payment, delinquency, default, and reinstatement charges.** A late payment, delinquency, default, reinstatement, or other such charge is not a finance charge if imposed for actual unanticipated late payment, delinquency, default or other such occurrence.

(d) **Overdraft charges.** A charge imposed by a bank for paying checks which overdraw or increase an overdraft in a checking account is not a finance charge unless the payment of such checks and the imposition of such finance charge were previously agreed upon in writing.

(e) **Excludable charges, real property transactions.** The following charges in connection with any real property transaction, provided they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this Part, shall not be included in the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes and for required related property surveys.

(2) Fees for preparation of deeds, settlement statements, or other documents.

(3) Amounts required to be placed or paid into an escrow or trustee account for future payments of taxes, insurance, and water, sewer, and land rents.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports.

12 C.F.R. § 226.6

* * *

(c) **Additional information.** At the creditor's or lessor's option, additional information or explanations may be supplied with any disclosure required by this Part, but none shall be stated, utilized, or placed so as to mislead or confuse the customer or lessee or contradict, obscure, or detract attention from the information required by this Part to be disclosed. Any creditor or lessor who elects to make disclosures specified in any provision of State law which, under paragraph (b) of this section, is inconsistent with the requirements of the Act and this Part may

(1) Make such inconsistent disclosures on a separate paper apart from the disclosures made pursuant to this Part, or

(2) Make such inconsistent disclosures on the same statement on which disclosures required by this Part are made; provided:

(i) All disclosures required by this Part appear separately and above any other disclosures,

(ii) Disclosures required by this Part are identified by a clear and conspicuous heading indicating that they are made in compliance with Federal law, and

(iii) All inconsistent disclosures appear separately and below a conspicuous demarcation line, and are identified by a clear and conspicuous heading indicating that the statements made thereafter are inconsistent with the disclosure requirements of the Federal Truth in Lending Act or the Federal Consumer Leasing Act.

12 C.F.R. § 226.8

* * *

(b) **Disclosures in sales and non-sale credit.** In any transaction subject to this section, the following items, as applicable, shall be disclosed:

* * *

(5) A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

12 C.F.R. § 226.8

* * *

(d) **Loans and other nonsale credit.** In the case of a loan or extension of credit which is not a credit sale, in addition to the items required to be disclosed under paragraph (b) of this section, the following items, as applicable, shall be disclosed:

(1) The amount of credit, excluding items set forth in paragraph (e) of this section, which will be paid to the

customer or for his account or to another person on his behalf, including all charges, individually itemized, which are included in the amount of credit extended but which are not part of the finance charge, using the term "amount financed."

GA. CODE ANN. § 109A-9-204

When security interest attaches; after-acquired property; future advances

* * *

(4) No security interests attaches under an after-acquired property clause

* * *

(b) to consumer goods other than accessions (109A-9—314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

FEDERAL RESERVE BOARD STAFF INTERPRETATIONS

NO. 271

We are pleased to respond to the specific questions raised in your letter of December 24, 1969, regarding the proposed Truth in Lending statement and promissory note to be used by the * * *.

With respect to the credit life insurance authorization, it is our opinion that the provisions of Section 226.4(a)(5)-(ii) require that the premium be disclosed in the authorization itself, and that the authorization is deficient if it simply refers to the amount of the premium disclosed elsewhere.

You are correct that Section 226.8(d)(1) does not require an itemization of the amount of money payable to other creditors as the result of a consolidation loan or the amount of money allocated to the debtor's old balance in the event an outstanding loan is rewritten or otherwise refinanced. That section applies only to charges which may be incurred in connection with the loan that are not a part of the finance charge.

Section 226.8(b)(7) of Regulation Z requires that creditors disclose the method of computing any unearned portion of the finance charge in the event of prepayment of the obligation. This requirement deals only with identification of the method of computing any rebate and does not prescribe that the procedures used in determining such rebate must also be disclosed. In most instances, reference to commonly known methods such as the "Rule of 78's" "Straight Line Method" or "Pro Rata" would be sufficient. It would seem to be preferable to include reference to the Rule of 78's in your disclosure form, since you indicate that that is basically what the statutes of Nebraska require. We do not believe, however, that mere reference to the specific statute in which the rebate formula can be found would be sufficient to comply with Section 226.8(b)(7).

Excerpts from FRB Letter of March 6, 1970, No. 271, by Kenneth A. Kenyon, Deputy Secretary.

NO. 444

This is in reply to your letter * * * requesting the Board to indicate that a * * * staff letter on Regulation Z, Truth in Lending, represents the position of the Board of Governors.

A staff opinion represents the informed view of the particular official responding to the inquiry, who is authorized by the Board to express opinions on the particular subject. While it is possible that in some instances it might not represent the position which the Board members themselves would take it they formally considered the issue, the Board considers the present informal and flexible procedure, by which members of its staff provide opinions on regulatory provisions, an essential part of its operations.

It is the Board's view that the public is entitled to rely on a formal staff opinion unless and until it is altered by the Board after formal consideration. Where the issue involves a statement of legal position, it may be assumed that while the question discussed has not been presented to, nor reviewed by the Board, such view is believed by the staff to be legally sound and judicially sustainable, and would be recommended by the staff for Board adoption should the matter be presented to the Board.

Excerpts from FRB Letter of March 1, 1971, No. 444, by Kenneth A. Kenyon, Deputy Secretary.

NO. 509

With decreases in money rates, you are considering reducing the interest rate on outstanding home mortgage loans. The reduced rate would continue as long as money rates continue at the lower level. If the rates increase, you intend to return the mortgage rate to a point at or below the initial contract rate. While no disclosures under

Regulation Z are necessary to reflect the initial reduction of the rate, you are concerned about their being required upon any possible subsequent increase.

It is the staff's view that when a rate is increased, even though returned to the original rate disclosed, § 226.8(j) of Regulation Z would apply and new disclosures would be required. In view of the period of a reduction in rate, the original disclosures would no longer be accurate. Furthermore, the new disclosures would be relatively simple to make, and would consist primarily of the new APR (which should be simply the new interest rate where there are no new charges), the unpaid balance ("amount financed"), the number, frequency and amount of remaining payments, the security, and the insurance disclosures. Delinquency and prepayment provisions would also have to be disclosed, but normally could be preprinted on the form. Furthermore, the exclusions from showing the "total of payments" and "finance charge" for first purchase money mortgages would be applicable to this type of refinancing of a first purchase money mortgage. In addition, the right of rescission would not be applicable. (See interpretation § 226.903.) In short, the prospect of new disclosures if the rate is increased should not discourage any reduction at this time.

It might be noted that if the mortgage calls for variable interest rates, and disclosures were made in accordance with interpretation § 226.810, then the annual percentage rate could be raised or lowered under the conditions specified in the original disclosure without making further disclosures.

With reference to your inquiry about the need to list all corporate securities securing a demand note when the rate is increased, it is the staff's view that the requirements of § 226.8(b)(5) for this type of frequently

changed and basically commercial security can be met simply by identifying the property as "common stock" or similar descriptive terminology. It would not be necessary to list each and every individual security. With reference to the general problem of frequent disclosures on demand obligations tied to an increasing prime rate, these obligations would appear to lend themselves to the variable rate disclosures described in interpretation § 226.810, which would obviate the need for any disclosures when the rate is increased or decreased. Problems of negotiability would probably be overcome if the variable disclosures are not incorporated into the note, but are made on a separate statement.

Your second question concerns the disclosure responsibilities of a lending institution when it reduces interest rates on outstanding first mortgage loans (perhaps on a permanent basis), and charges a service charge of one percent. Interpretation § 226.817 provides that if no other credit terms are changed, a reduction in the annual percentage rate does not constitute a new transaction requiring new disclosures. In the staff's view, imposition of a service charge is a change in the credit terms of the type contemplated in § 226.817 which would make § 226.817 inapplicable, and would require a new disclosure statement. However, as in the case of the prior question, under the provisions of § 226.903 the right of rescission would not be available, and the creditor would not need to disclose the "total of payments" or "finance charge" under the exclusion in § 226.8(b)(3).

Excerpts from FRB Letter of July 30, 1971, *No.* 509, *by Frederic Solomon, Director.*

NO. 521

This is in [regards to] the disclosure of a security interest in household goods and other personal property under Regulation Z.

The intent of § 226.8(b)(5) of Regulation Z is that the customer should be provided a disclosure of the security interest taken as a result of the consumer credit transaction. It is staff's opinion that disclosing to the customer the fact that a security interest will be taken on his household goods and other personal property is adequate to meet the provisions of § 226.8(b)(5), without listing each item. We believe that to require such a listing would be extremely burdensome to creditors. We understand that in many jurisdictions, it is not necessary to have a detailed listing in order to perfect a lien on household goods and other personal property.

Consequently, we believe that the device of using a box (to be marked only if the borrower's household goods and personal property are not to be collateralized), would be acceptable under Regulation Z.

Excerpts from FRB Letter of August 26, 1971, *No.* 521, *by Griffith L. Garwood, Chief, Truth in Lending Section.*

NO. 983

This is in response to your letter * * * and your previous correspondence concerning Public Information Letter 829. Specifically, you question the conclusions stated in that letter as to the proper disclosure of a security interest in after-acquired property under § 226.8(b)(5) of Regulation Z.

Letter 829 addressed the situation in which a creditor discloses a security interest in *all* after-acquired property when the relevant State law only permits the acquisition of a security interest in those consumer goods in which the debtor acquires rights within 10 days after the secured party gives value. This limitation is found in § 9-204 of the Uniform Commercial Code, which is in effect in 49 states. The inquiring creditor had based this disclosure on the security interest description contained in Exhibit E of the Board's pamphlet *What You Ought to Know About Truth*

in Lending and questioned whether reliance on the form would constitute a defense against civil liability under section 130(c) of the Act. Staff's response indicated that the description of the security interest must accurately reflect the type of security interest that may be validly acquired under State law, in order to comply with § 226.8(b)(5). Letter 829 has been interpreted to require that the 10-day limitation on after-acquired property be included in the security interest disclosure under that section.

Upon further consideration of that letter, staff believes that, to the extent that it would require a creditor to disclose limitations on after-acquired property, Letter 829 should be modified. In staff's opinion, it would be sufficient, in disclosing an after-acquired property clause under § 226.8(b)(5), to state simply that the security interest covered such property, without further describing the manner and conditions under which the interest attaches. We believe that this would comply with the relevant provisions in that section, which requires the creditor to clearly set forth the *fact* that after-acquired property will be subject to the security interest.

It must be emphasized, however, that staff's position on this issue rests not on Exhibit E of the pamphlet but on Regulation Z itself. As indicated in Letter 829, we do not believe that a creditor can automatically comply with the Regulation by using a sample form, regardless of whether the terms of the creditor's own credit plan coincide with those described in that form. For example, if a creditor discloses that the Rule of 78's will be used to compute finance charge rebates and State law does not permit the use of that rebate method in that type of credit transaction, this disclosure would clearly violate § 226.8(b)(7), despite the fact that the creditor's disclosure exactly mirrors the language of Exhibit E.

Thus, we believe that Letter 829 is correct in stating that the forms found in the pamphlet are "not necessarily

definitive or accurate for every credit transaction." Creditors must consider their own particular credit plans in light of the requirements of Regulation Z and design their disclosures accordingly.

Excerpts from FRB Letter of December 30, 1975, No. 983, by Jerauld C. Kluckman, Assistant Director.

NO. 1053

This is in response to your letter * * * regarding our previous correspondence on disclosure of a security interest in after-acquired property under § 226.8(b)(5) of Regulation Z.

In staff's letter of January 9, we indicated that a creditor need not state the conditions or limitations imposed by State law in the disclosure of a security interest in after-acquired property under § 226.8(b)(5). Specifically, it would not be necessary for a creditor to provide a statement of the effect of § 9-204 of the Uniform Commercial Code on security interests in after-acquired property.

You state that certain retail instalment contracts indicate that the creditor is reserving an interest in all after-acquired property including all attachments, substitutions, and replacements, without any indication of the limitations imposed by § 9-204. You ask whether this would constitute a violation of either § 226.6(c) or § 226.8(b)(5) of the Regulations.

It appears from your letter that these creditors are disclosing a security interest in "all after-acquired property" or "all after-acquired property including all attachments, substitutions, and replacements." If, in fact, the applicable State law only permits acquisition of a security interest in after-acquired property acquired within a certain period of time, then such a statement would be improper under Regulation Z. As our previous

letter indicates, a simple disclosure of the fact that after-acquired property may be subject to the security interest would be sufficient to comply with the clear language of § 226.8(b)(5), without an explanation of the various conditions and limitations on such interests which may be imposed by the applicable State law. However, the fact that the creditor need not disclose such limitations and conditions does not mean that the creditor may affirmatively misstate the scope of the security interest, in disregard of those limitations. If, in fact, the creditor discloses an interest in *"all* after-acquired property," when the interest would actually attach only to property acquired by the borrower within a certain period of time, such a disclosure would be inaccurate and misleading in violation of Regulation Z.

Excerpts from FRB Letter of May 28, 1976, *No.* 1053, *by Jerauld C. Kluckman, Assistant Director.*

NO. FC-0023

This is in response to your letter * * * requesting an official interpretation on the disclosure of the type of a security interest under § 226.8(b)(5) of Regulation Z.

Section 226.8(b)(5) of Regulation Z requires the creditor to disclose, among other things, the "type of any security interest held or to be retained or acquired by the creditor." You submit three phrases which are intended to describe the type of a security interest taken by the creditor and request staff's opinion as to whether each of these phrases constitutes a sufficient description of the security interest under § 226.8(b)(5).

First, you ask whether the disclosure of a "security interest under the Uniform Commercial Code" is a sufficient description when the creditor obtains a security interest subject to the UCC. In staff's opinion, this language would be sufficient to comply with that requirement of § 226.8(b)(5) in the situation you describe. Staff believes that this provision of the Regulation does

not require creditors to provide a detailed statement of the type of interest acquired or a citation to any specific statutory provision pursuant to which the security interest is obtained. In staff's view, a security interest under the Uniform Commercial Code is a "type" of security interest and may be adequately described using the language you suggest.

Additionally, you ask whether a concensual or contractual security interest may be disclosed in language such as the following: "a security interest established by our contract" or "a security interest through our agreement." In staff's opinion, this language does not adequately describe the type of security interest taken, pursuant to § 226.8(b)(5). The words "contract" and "our agreement" may not convey any particular meaning to the customer or assist him in identifying the legal document from which the security interest arises. However, if the language you propose could be modified to more specifically identify the contract or agreement referred to, staff believes that such a disclosure would adequately describe the type of security interest involved. For example, the statement might refer to the specific title of the document which evidences the security interest.

This is an official staff interpretation of Regulation Z issued pursuant to § 226.1(d)(3) of the Regulation. Staff's conclusions relate solely to the facts and issues presented.

FRB Official Staff Interpretation, November 22, 1976, *effective November* 30, 1976, *No.* FC-0023, 41 *F.R.* 52980, *by Jerauld C. Kluckman, Assistant Director.*

CONTRACT AND SECURITY AGREEMENT ON WHICH THE ACTION WAS BASED

Note and Disclosures Required by Federal and State Law.

HOME OF friendly BOB ADAMS service

GENERAL FINANCE CORPORATION
OF GEORGIA
816 GORDON STREET, S.W.
ATLANTA, GEORGIA 30310
32-0227 PHONE 758-7226

LOAN NUMBER 11993-0

BORROWER'S (NAMES, ADDRESSES & SOCIAL SECURITY NUMBERS)

AUTHORIZED INSURANCE COVERAGE:
- [ ] Single Decreasing Credit Life
- [x] Single Level Term Credit Life
- [x] Disability Insurance With 3 Day Retroactive Waiting Period
- [ ] Disability Insurance With 7 Day Retroactive Waiting Period
- [ ] Auto Physical Damage Insurance

Y 12 V

POLLOCK, JOHN C & BARBARA
6523 CLEMENT DR S W
ATLANTA GA 30331

23 260 65 6101

APD DEDUCTIBLE COLL. $	APD DEDUCTIBLE COMP. $	COST OF AUTO PHYSICAL DAMAGE INSURANCE $

DATE	FIRST INSTALLMENT DUE DATE	OTHERS: SAME DAY EACH MONTH	FINAL INSTALLMENT DUE DATE	INSTALLMENTS FIRST: $	INSTALLMENTS OTHER $	INTEREST BEGINS
09/12/73	10/12/73		09/12/74	17.00	17.00	9/12/73

TOTAL OF PAYMENTS $	INTEREST CHARGE $	TOT LOAN FEES $	AMOUNT FINANCED $	CREDIT INSURANCE CHARGES LIFE $	CREDIT INSURANCE CHARGES DISABILITY $		
204.00	16.32	16.32	171.36	5.84	12.24		331

TOTAL AMOUNT PAYABLE		OFFICIAL FEES	FINANCE CHARGE	ANNUAL PERCENTAGE RATE	SECURITY INTEREST	REAL ESTATE DEED
12 IN MONTHLY INSTALLMENTS		$ NONE NONE	$ 32.64	33.47%	YES	
TOTAL LOAN FEE BREAKDOWN	P.F. FEE		NOTE LOAN	FINANCE CHARGE	ANNUAL PERCENTAGE RATE	
	16.32	NONE				

(1) CREDIT LIFE OR DISABILITY INSURANCE is not required to obtain this loan. If borrowers desire credit life insurance or credit life and disability insurance, the charge(s) therefor stated above will be deducted from the Amount Financed and the insurance covers the borrower named in the certificate(s) of insurance delivered herewith. No charge is made for credit insurance and no credit insurance is provided unless one of the borrowers signs the appropriate statement below:

I Desire Level Term Credit Life Insurance.

9-12-73

Borrower's Signature — Date

I Desire Decreasing Term Credit Life Insurance.

Borrower's Signature — Date

I Desire Credit Disability Insurance. I understand that such disability benefits will be payable to the Lender above named as its interest may appear in the event I am disabled and my disability continues for more than THREE *days.*

9-12-73

Borrower's Signature — Date

(2) You have the right to choose the person through whom any Auto physical damage insurance is to be obtained. If Borrower desires Lender to obtain Auto Physical Damage insurance the cost is stated above.

Borrower hereby authorizes Lender to obtain Auto physical damage insurance and deduct the premium thetefor from the above described Loan, and acknowledges receipt of a copy of the separate disclosure of the terms of such insurance, bearing even date herewith:

Borrower's Signature — Date

TOTAL OF PAYMENTS is the Amount Financed plus the Finance Charge and is the amount required for payment according to schedule.

AMOUNT FINANCED includes any Official Fees and any charge for credit life and/or disability insurance and auto physical damage insurance, and is Principal Amount of Loan.

OFFICIAL FEES are paid to public officials for perfecting or releasing security.

11/5/73

FINANCE CHARGE – ANNUAL PERCENTAGE RATE. The Finance Charge is the sum of the Interest and Loan Fees and is computed for the full term of the contract. The Finance Charge is subject to delinquency charges, and the Interest portion thereof is subject to prepayment in full. The computation of the Finance Charge and delinquency charge is made in accordance with Sections 15(a), (b) and (d) of the Georgia Industrial Loan Act, printed on the reverse side hereof. The Annual Percentage Rate, if computed by the actuarial method for payment according to schedule, would yield the Finance Charge, but it is not the contract rate of charge.

691-0458 D ----- N. T V NONE

PREPAYMENT REFUND. Borrower may prepay the loan in full or part at any time. If prepaid in full before maturity, a portion of the Interest will be refunded in an amount equal to that proportion of the Interest which the sum of the monthly balances scheduled to follow the date of prepayment in full bears to the sum of all the monthly balances provided for in the original contract. The Loan Fees are fully earned at the time the loan is made and are not subject to prepayment refunds. No refund of Interest of less than $1.00 will be made; all in accordance with Section 17 of the Georgia Industrial Loan Act, printed on the reverse side hereof.

DELINQUENCY CHARGES: A delinquency charge of 5¢ for each $1.00 of any installment 5 days or more in default may be collected, provided that this charge may not be collected more than once for the same default.

SECURITY. This loan is secured by this note and any credit life and/or disability insurance and auto physical damage insurance for which a charge is made as stated above. If "YES" appears under "Security Interest" above, there is a Security Agreement on household and consumer goods belonging to Borrowers and located at their address stated above, and on any property listed below. If "YES" appears under "Real Estate Deed" above, a deed has been taken to the real estate belonging to Borrowers located at their address stated above unless a different address is stated below. The Security Agreement may cover after-acquired property. Any chattel or real property which secures this loan may secure future or other indebtedness.

Make	*Model*	*Identification No.*	*Type*	*Year*

IN CONSIDERATION OF THE ABOVE DESCRIBED LOAN made by the above named corporation, the undersigned, jointly and severally, promise to pay to the order of said corporation at its above office the Total of Payments of this note in installments of the amounts and upon the dates shown above with all costs of collection, including fifteen (15%) per cent of the total amount of unpaid indebtedness for attorney's fees if collected by law or through an attorney at law and also any delinquency charges due hereon. Failure to pay any installment promptly when due, time being of the essence of this contract, shall, at the option of the holder hereof, without notice or demand, render all remaining installments due and payable. The undersigned agrees to pay interest after the maturity date hereof at the rate of eight (8%) per cent per annum.

Payment shall be made in consecutive monthly installments as above indicated beginning on the stated due date for the first installment. When the holder's office is not open for business on a stated due date, that due date shall be the next succeeding business day. Default may be discussed with any present or future employer.

Each of the undersigned, whether Principal, Surety, Endorser, Guarantor, or other party hereto, hereby severally waives and renounces, each for himself and family, any and all homestead or exemption rights either of us may have under or by virtue of the Constitution or Laws of Georgia, any other State, or the United States, as against this debt or any renewal thereof; and the undersigned, and each Surety, Endorser, Guarantor or other party to this note, transfers, conveys and assigns to the Holder hereof, a sufficient amount of any homestead or exemption as may be set apart in bankruptcy, to pay this note in full, with all costs of collection; and each further waives demand, protest and notice of demand, protest and non-payment. Each of us further agrees that this note or any installment may be renewed or extended and any security may be released or substituted without notice to us and without affecting our liability.

Payment in advance may be made in any amount. The undersigned agree that should the Holder accept a partial payment hereon the remaining portion of the payment or payments due is not waived, and may be collected at any future time. The Holder shall have the right to accept smaller payments at its option. Failure of the Holder to exercise any of its rights hereunder shall not constitute a waiver thereof.

If any of the undersigned is a married woman, she represents and warrants that this instrument has been executed in her behalf, and for her sole and separate use and benefit and that she has not executed the same as surety for another, but that she is the Borrower hereunder. The undersigned jointly and severally represent and warrant that each of them is at least twenty-one years of age, and laboring under no disability to contract, and that none of them contemplates making application for a homestead or for adjudication as bankrupty, and that none of them contemplates moving from its present address, and that each is solvent.

This agreement shall inure to and be binding upon the several respective legal representatives, successors, heirs, and assigns of the parties hereto. The construction, validity, and effect hereof shall be governed by the laws of Georgia, except as modified by the Federal Consumer Credit Protection Act.

BORROWERS ACKNOWLEDGE RECEIPT OF AN EXACT AND COMPLETELY FILLED IN COPY OF THIS DOCUMENT AND CERTIFICATES EVIDENCING ANY REQUESTED INSURANCE.

Witness the hands and seals of the undersigned, this 12TH day of SEPT. 19 73

WITNESSES:

J B Hanna

Charlene Hitson

(SEAL)

(SEAL)

(SEAL)

SECTIONS 15(a), (b) AND (d) OF THE GEORGIA INDUSTRIAL LOAN ACT:

Maximum Rate of Charge. Every licensee hereunder may loan any sum of money not exceeding $2,500.00 for a period of two years or less, and may charge, contract for, collect and receive interest, and fees and may require the fulfillment of conditions on such loans as hereinafter provided:

(a) Charge, contract for, receive and collect interest at a rate not to exceed 8 Per Cent per annum of the face amount of the contract, whether repayable in one single payment or repayable in monthly or other periodic installments. On loan contracts repayable in 18 months or less, the interest may be discounted in advance, and on contracts repayable over a greater period, the interest shall be added to the principal amount of the loan. On all contracts, interest or discount shall be computed proportionately on equal calendar months.

(b) In addition thereto, charge, contract for, receive or collect at the time the loan is made, a fee in an amount not greater than 8 percent of the first $600.00 of the face amount of the contract, plus 4 percent of the excess; provided, however, that such fee shall not be charged or collected on that part of a loan which is used to pay or apply on a prior loan, or installment of a prior loan from the same licensee to the same borrower made within the immediately preceding 6 months period; provided, however, if the loan balance is $100.00 or less, the said period shall be 2 months, not 6 months; provided, further, that nothing contained in Subsections 15 (a) and 15 (b) shall be construed to permit charges, interest of fees of any nature whatsoever in the aggregate in excess of the charges, interest, and fees which would constitute a violation of Section 57-117 of the Code of Georgia of 1933 and the repeals hereinafter set forth in this Act shall in no wise affect Section 57-117 and Section 57-9901 of the Code of Georgia of 1933. If a borrower prepays his entire loan to a licensee and within the following 15 days make a new loan with that licensee, (and if this is done within the 6 months period or the 2 months period above described, as may be applicable), the fee may be charged only on the excess by which the face amount of the new contract exceeds the amount which the borrower repaid to that licensee within the said 15-day period.

(d) Charge and collect from the borrowers a late or delinquent charge in an amount equal to 5 cents for each $1.00 of any installment which is not paid within 5 days from the date such payment is due, provided that this late or delinquent charge shall not be collected more than once for the same default.

SECTION 17 OF THE GEORGIA INDUSTRIAL LOAN ACT

REFUNDS. Notwithstanding the provisions of any contract to the contrary, a borrower may at any time prepay all or any part of the unpaid balance to become payable under any installment contract. If the borrower pays the time balance in full before maturity, the licensee shall refund to him a portion of the prepaid interest, calculated in complete even months (odd days omitted); as follows: The amount of the refund shall represent at least as great a portion of the total interest as the sum of the periodical time balance after the date of prepayment bears to the sum of all periodical time balances under the schedule of payments in the original contract. Where the amount of the refund due to anticipation of payment is less than $1.00 no refund need be made. Provided, further, that if the borrower has been required to purchase other than insurance coverage in a blanket policy when he has paid no acquisition cost, he shall have the option to continue such insurance in force for the balance of the policy period, with all rights transferred to the borrower or his assigns, in which event no refund of insurance premiums shall be made to him.

SECURITY AGREEMENT

HOME OF *friendly* BOB ADAMS *service*

GENERAL FINANCE CORPORATION
OF GEORGIA
815 GORDON STREET, S.W.
ATLANTA, GEORGIA 30310
32-0227 PHONE 758-7226

LOAN NUMBER

DEBTOR'S (NAMES, ADDRESSES & SOCIAL SECURITY NUMBERS)

POLLOCK, JOHN C & BARBARA
[illegible] CLEMENT [illegible]
ATLANTA GA 303[illegible]

23 260 66 6191

				APD DEDUCTIBLE COLL. $	COMP. $	COST OF AUTO PHYSICAL DAMAGE INSURANCE $	
DATE [illegible]/12/73	FIRST INSTALLMENT DUE DATE 10/12/73	OTHERS: SAME DAY EACH MONTH	FINAL INSTALLMENT DUE DATE [illegible]/12/74	INSTALLMENTS FIRST $ 17.[illegible]	OTHERS $ [illegible]		INTEREST BEGINS 9/12/73
TOTAL OF PAYMENTS $ [illegible]	INTEREST CHARGE $ [illegible]	TOT. LOAN FEES $ [illegible]	AMOUNT FINANCED $ 171.[illegible]	CREDIT INSURANCE CHARGES LIFE $ [illegible]	DISABILITY $ [illegible]		331
TOTAL AMOUNT PAYABLE IN [illegible] MONTHLY INSTALLMENTS		[illegible]	OFFICIAL FEES $ [illegible]	FINANCE CHARGE $ [illegible].64	ANNUAL PERCENTAGE RATE [illegible].47 %	SECURITY INTEREST YES	REAL ESTATE DEED
TOTAL LOAN FEE BREAKDOWN	[illegible] FEE	[illegible] FEE	[illegible]	FINANCE CHARGE	ANNUAL PERCENTAGE RATE		

THIS SECURITY AGREEMENT SECURES FUTURE ADVANCES AS PROVIDED BELOW.

The Undersigned, hereinafter referred to as Debtor, hereby acknowledges receipt of a loan from the above-named corporation, hereinafter called Secured Party, as evidenced by a note of the same date as this agreement, executed by Debtor and payable to Secured Party in the amount and upon the terms as above stated.

In consideration of said loan and to further secure the payment of said note, Debtor hereby conveys and mortgages to Secured Party, its successors and assigns, the chattels hereinafter described; provided, however, if Debtor shall pay and discharge said note according to the terms thereof, then this agreement shall be void; otherwise, it is to remain in full force and effect. All payments made on said note at any time shall be applied to amounts then due, until the indebtedness secured hereby is paid in full.

This Security Agreement is given to secure the payment of said note and any note or notes executed and delivered to Secured Party by Debtor at any time before the entire indebtedness secured hereby shall be paid in full, evidencing either a future advance or advances made solely at Secured Party's option at any time or from time to time, or a refinancing of any unpaid balance of the note above described or renewal thereof, or both such future loan or refinancing. The maximum amount of indebtedness secured by this agreement shall not exceed $2,500.00 in principal amount at any one time.

Debtor hereby warrants said property and agrees to defend Secured Party's in same against all claims and demands whatsoever.

Said Secured Party shall be subrogated to all encumbrances and claims paid off against said property with monies advanced by said Secured Party. Debtor shall keep said property fully insured against all substantial risks or losses, with insurance reasonably related to the type and value of the property insured and the amount and term of loan with loss payable to said Secured Party, and shall pay all premiums and shall pay all taxes and other charges against said property promptly when the same become due. The loss or destruction of said property from any cause, with or without fault of Debtor shall not affect said property promptly when the same become due. The loss or destruction of said property from any cause, with or without fault of Debtor shall not affect in any way the liability of Debtor to repay any and all indebtedness hereby secured. Debtor shall not use said property illegally and shall not remove it from this State and shall not sell, encumber or dispose of said property without the permission of said Secured Party. Debtor shall keep said property in good and serviceable condition and repair and shall not allow the same to be misused or abused.

In addition to all other obligations herein, the Debtor shall pay all actual lawful fees paid to a public official or agency of this State for filing, recording or releasing this instrument (if insurance is obtained by said Secured Party against the risk of non-recording, then in lieu of the fees paid for filing and recording this instrument, the Debtor shall pay the premium actually paid for such insurance); and the Debtor shall also pay the actual and reasonable expenses of repossessing, storing and selling any collateral pledged as security for this contract, if in default.

Debtor may retain possession of said chattels, accessories and equipment, as long as the payments on said note are made by the due date therein provided and all other covenants of this agreement are fulfilled, but Debtor may not permanently remove said property from the County or State without the consent of Secured Party. If Debtor fails to pay any installment of said note when due, or fails to perform any of the covenants hereof, or makes default in any respect, or uses said property contrary to law, or if Secured Party feels insecure for any reason whatsoever, then all installments of said note shall at the option of Secured Party, without notice or demand, become immediately due and payable, and Secured Party may take possession of and remove without liability said property together with any other chattels or things attached thereto or therein contained, without notice, demand, or legal process. The Debtors agree, in the event of declaration of default by the Secured Party, that they shall assemble such collateral and make it available to the Secured Party, at the Debtor's place of residence and the Secured Party may dispose of such collateral on said premises. The Debtor's place of residence shall be at the address given above; or, in the event of removal of the collateral or goods from said address with the Secured Party's consent, then the address to which such goods are removed. The remedies available to the Secured Party shall be governed by, and the Secured Party shall proceed in accordance with the provisions of Article 9 of the Uniform Commercial Code of Georgia.

It is agreed that "Debtor" is to be construed as plural in case there be more than one Debtor.

If possession of said chattels is taken by Secured Party or given up to Secured Party, or said chattels are sold in the manner above described or in any other manner, Debtor covenants that he will assign to Secured Party, or to any person designated by Secured Party, the certificate of title or any other document which is now required or may hereafter be required by any State Motor Vehicle Law. Except as otherwise prohibited by law, Debtor agrees to reimburse Secured Party its reasonable attorneys' fees and legal expenses incurred in the repossession and disposal of the collateral thereunder.

DESCRIPTION OF SECURED PROPERTY: *All of the household and consumer goods (including all chattels used or bought for use primarily for personal, family or household purposes) now or hereafter located in or about the premises constituting the Debtor's residence at their address above set forth or at any other address to which the same may be removed, which shall include but not be limited to any property which may be described in Security List Schedule "A" bearing even date herewith, which, if applicable, is incorporated in and made a part of this Security Agreement, and any property listed below.*

Make	*Model*	*Identification No.*	*Type*	*Year*

(Complete with all equipment, parts and accessories now thereon or hereafter attached thereto by Debtor).

Witness the hands and seals of Debtors this 12 day of Sept 19 73

Signed, sealed and delivered in the presence of:

[illegible] x Barbara Pollock (SEAL)

Charlene Dalum x Mr. John C. Pollock (SEAL)

BEST COPY AVAILABLE